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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,698	06/30/2003	Hemingway Huynh	111255-135502	4440
25943 7590 05/05/2008 SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204				
EXAMINER WON, MICHAEL YOUNG				
ART UNIT 2155		PAPER NUMBER		
MAIL DATE 05/05/2008		DELIVERY MODE PAPER		

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/611,698  
Filing Date: June 30, 2003  
Appellant(s): HUYNH ET AL.

\_\_\_\_\_  
Nathan R. Maki (Reg. No. 51,110)  
For Appellant

**EXAMINER'S ANSWER**

1. This is in response to the appeal brief filed March 13, 2008 appealing from the Final Office action mailed October 9, 2007.

**Real Party in Interest**

2. The appellants' statement identifying the real party in interest contained in the brief is correct.

**Related Appeals and Interferences**

3. The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**Status of Claims**

4. The appellants' statement of the status of claims contained in the brief is correct.

**Status of Amendments**

5. The appellants' statement of the status of amendments after contained in the brief is correct.

**Summary of Claimed Subject Matter**

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6. The appellants' summary of claimed subject matter contained in the brief is correct.

#### **Grounds of Rejection to be Reviewed on Appeal**

7. The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

#### **Claims Appendix**

8. The appellants' copy of the appealed claims contained in the Appendix to the brief is correct.

#### **Evidence Relied Upon**

6,594,699	Sahai et al.	7-2003
7,024,485	Dunning et al.	4-2006

#### **Grounds of Rejection**

9. The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-10, 34, and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai et al. (US 6,594,699) in view of Dunning et al. (US 7,024,485).

**INDEPENDENT:**

As per **claim 1**, Sahai teaches an article comprising:

a storage medium (see col.8, line 37: "stored on the server"); and

instructions stored in the storage medium which when executed by a processor (see col.2, line 47: "server computer/processor 10" and col.8, lines 48-50: "computer program executing on said server"), cause the processor to generate and transmit one or more messages to a receiving computer system (see col.2, lines 61-64: "responds to the transfer request by streaming the data over the network to the client"), the one or more messages including:

logic for testing digital content capabilities of the receiving computer system when the link is dereferenced (see col.5, lines 1-8: "The process of the invention starts with the user "clicking-on" 22 the Universal Resource Locator (URL)... capabilities of the client machine 12 are then determined"; and col.6, lines 57-63: "It is possible for the server 10, at the time of an initial hit on the home page for multimedia service, to send or stream an application to the client... in response to the initial HTTP request"); and

logic for displaying a selected one of a plurality of versions of digital content selected based on the results of testing digital content capabilities of the receiving computer system (see col.2, lines 8-11: "adapts the media format to the client

capabilities”), such that the receiving computer system may display the selected version of the digital content in the media message as a second layer of the adaptive media message (see col.2, lines 16-18: “to optimize playback of the asset to the client based on the client capabilities and user specifications or preferences”).

Sahai does not explicitly teach a media message to be displayed on the receiving computer system as a first layer of an adaptive media message, the media message including a link.

Dunning teaches a media message to be displayed on the receiving computer system as a first layer of an adaptive media message (see col.2, lines 52-56: “the first section is playable at a relatively low quality level”), the media message including a link (see col.1, lines 36-40: “click on a link”).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Sahai in view of Dunning so that a media message to be displayed on the receiving computer system as a first layer of an adaptive media message, the media message including a link. One would be motivated to do so because Dunning teaches that such implementation allows user to quickly access files even though they have slow communication channels (see col.7, lines 16-18).

As per **claim 6**, Sahai teaches a method in a computing system for presenting an adaptive message (see col.5, lines 41-45: “formatting the data and adapting it”), comprising:

receiving a message in the computing system including a link (see col.2, lines 59-60: "The locator indicates the multimedia data to be streamed or transferred" and col.5, lines 1-4: "(URL) associated with the streamable multimedia asset desired"); and based on the contents of the received message:

testing, when the link is dereferenced, two or more digital content capabilities of the computing system (see col.5, lines 1-8: "The process of the invention starts with the user "clicking-on" 22 the Universal Resource Locator (URL)... capabilities of the client machine 12 are then determined"; and col.6, lines 57-63: "It is possible for the server 10, at the time of an initial hit on the home page for multimedia service, to send or stream an application to the client... in response to the initial HTTP request");

selecting one of a plurality of different digital content elements based upon the results of the testing (see col.2, lines 16-18: "to optimize playback of the asset to the client based on the client capabilities and user specifications or preferences"); and

presenting the selected one of the plurality of different digital content elements within the message as a second layer of the adaptive media message (see col.2, lines 8-11: "adapts the media format to the client capabilities").

Sahai does not explicitly teach displaying the message as a first layer of an adaptive media message.

Dunning teaches displaying the message as a first layer of an adaptive media message (see col.2, lines 52-56: "the first section is playable at a relatively low quality level").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Sahai in view of Dunning by implementing displaying the message as a first layer of an adaptive media message. One would be motivated to do so because Dunning teaches that such implementation allows user to quickly access files even though they have slow communication channels (see col.7, lines 16-18).

As per **claim 34**, Sahai teaches an article comprising:

a storage medium (see col.8, line 37: "stored on the server"); and

instructions stored in the storage medium which when executed by a processor (see col.2, line 47: "server computer/processor 10" and col.8, lines 48-50: "computer program executing on said server"), cause the processor to generate and transmit one or more messages to a receiving computer system (see col.2, lines 61-64: "responds to the transfer request by streaming the data over the network to the client"), the one or more messages including:

logic for testing capabilities of the receiving computer system when the link is dereferenced (see col.5, lines 1-8: "The process of the invention starts with the user "clicking-on" 22 the Universal Resource Locator (URL)... capabilities of the client machine 12 are then determined"; and col.6, lines 57-63: "It is possible for the server



10, at the time of an initial hit on the home page for multimedia service, to send or stream an application to the client... in response to the initial HTTP request"); and

logic for displaying a selected one of a plurality of versions of media content selected based on the results of testing capabilities of the receiving computer system (see col.2, lines 8-11: "adapts the media format to the client capabilities"), such that the receiving computer system may display the selected one of the plurality of versions of the media content in the media message as a second layer of the adaptive media message (see col.2, lines 16-18: "to optimize playback of the asset to the client based on the client capabilities and user specifications or preferences").

Sahai does not explicitly teach a media message to be displayed on the receiving computer system as a first layer of an adaptive media message, the media message including a link.

Dunning teaches a media message to be displayed on the receiving computer system as a first layer of an adaptive media message (see col.2, lines 52-56: "the first section is playable at a relatively low quality level"), the media message including a link (see col.1, lines 36-40: "click on a link").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Sahai in view of Dunning so that a media message to be displayed on the receiving computer system as a first layer of an adaptive media message, the media message including a link. One would be motivated to do so because Dunning teaches that such implementation allows user to quickly

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access files even though they have slow communication channels (see col.7, lines 16-18).

**DEPENDENT:**

As per **claim 2**, which depends on claim 1, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the logic is directly contained in the one or more messages (see col.6, lines 57-63).

As per **claim 3**, which depends on claim 1, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the logic is included in the one or more messages by reference (see col.6, lines 57-63).

As per **claim 4**, which depends on claim 1, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the selected one of the plurality of versions of the digital content is not directly included in the media message as first transmitted to the receiving computer system, but is separately transferred under the control of the logic for displaying (see col.4, lines 32-39).

As per **claim 5**, which depends on claim 1, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the selected one of the plurality of versions of the digital content is

downloaded by the logic for displaying, and is downloaded in a form customized for an addressee of the message (see col.4, lines 32-36 and col.5, lines 41-46).

As per **claim 7**, which depends on claim 6, Sahai further teaches wherein the plurality of different digital content elements includes a high-quality video sequence and a low-quality video sequence (see col.4, lines 25-27).

As per **claim 8**, which depends on claim 6, Sahai or Dunning do not explicitly teach wherein the plurality of different digital content elements includes a video sequence and an animation sequence.

However video sequence and animation sequence are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Multimedia assets will be transmitted regardless of the content of the multimedia asset (see col.3, lines 5-6 & 57-60 and col.4, lines 25-27). Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include any digital content elements (i.e. video, audio, animation, live... ect.) because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

As per **claim 9**, which depends on claim 6, Sahai further teaches wherein the plurality of different digital content elements includes a first digital content element

constructed for playing on a first player and a second digital content element constructed for playing on a second player different from the first player (implicit: see col.3, lines 34-40).

As per **claim 10**, which depends on claim 6, Sahai further teaches wherein the selected one of the different digital content elements is selected based upon actions of a user of the computer system in connection with the received message (see col.2, lines 8-18 and col.3, lines 46-49).

As per **claim 40**, which depend on claim 1, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the logic for testing digital content capabilities of the receiving computer system includes a script to be executed by the receiving computer system to test said digital content capabilities (see col.5, lines 26-31).

As per **claim 41**, which depend on claim 34, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the logic for testing and the logic for displaying are appended to the media message (see col.2, lines 26-28).

As per **claim 42**, which depend on claim 34, Sahai does not explicitly teach wherein the instructions, when executed by the processor, generate the one or more messages such that the media message further includes: a replaceable section to be replaced by a replacing section including the selected one of the plurality of versions of media content.

Dunning teaches a replaceable section to be replaced by a replacing section including the selected one of the plurality of versions of media content (see col.10, lines 43-51: “the low quality version of track B 2834 is output in lieu of the higher quality version 2830 of Fig.4C. However, the higher quality version of track A 2832 can still be presented”).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Sahai in view of Dunning by implementing a replaceable section to be replaced by a replacing section including the selected one of the plurality of versions of media content. One would be motivated to do so because Dunning teaches that such implementation allows user to quickly access files even though they have slow communication channels (see col.7, lines 16-18) and allows users to view higher quality versions as they become available at the client (see col.2, lines 60-61).

As per **claim 43**, which depend on claim 42, Sahai further teaches wherein the instructions, when executed by the processor, generate the one or more messages such that the logic for displaying includes a replace script (see col.5, lines 26-31) to replace the replaceable section of the media message with the replacing section (see claim 42 rejection above).

### **Response to Argument**

11. The examiner summarizes the various points raised by the appellant and addresses replies individually.

12. As per appellants' arguments filed March 13 2008, the appellant(s) argue in substance:

**(a)** That the limitations of independent claims 1, 6, and 34, specifically, "a message that includes testing logic being sent to the receiving computer system" (see Appeal Brief, page 10, lines 6-7), is not taught or is not made obvious by Sahai or Dunning.

**In response to (a)**, the examiner equates this "logic for testing capabilities" to be any application or code that determines the capabilities of the client device (i.e. "receiving computer system"). Sahai teaches that although the invention has been described with respect to the application residing on the client machine, "it is possible for the server 10, at the time of an initial hit on a home page for a multimedia service, to send or stream an application" ("surveying the client capabilities") "to the client" (see col.6, lines 57-62). Furthermore, such method of downloading of any application data is knowledge clearly known to one of ordinary skill in the art at the time the invention was made. Whether the application resides at the client or server, wherein the functionality of the application remains the same, does not render the invention novel.

**(b)** That neither references (Sahai or Dunning) "does not teach or make obvious inclusion of the link, which when dereferenced activates the testing logic" (see Appeal Brief, page 10, lines 12-14).

**In response to (b)**, Sahai clearly teaches "The process of the invention **starts with the user "clicking-on" 22 the Universal Resource Locator (URL)**", "capabilities of the client machine 12 are then determined" (see col.5, lines 1-8, emphasis added). Further, Sahai teaches "It is possible for the server 10, **at the time of an initial hit on the home page** for multimedia service, to send or stream an application to the client... in response to the initial HTTP request" (see col.6, lines 57-63, emphasis added).

(c) That the limitations of claim 2, specifically, "generate the one or more messages such that the logic is directly contained in the one or more messages" (see Appeal Brief, page 11), is not taught by Sahai.

**In response to (c)**, although Sahai teach of a JAVA application which merely asks (prompts) the user to supply the capabilities, Sahai is only giving one example of an application streamed to the client (see col.6, line 62: "such as"). Clearly any application that performs, "surveying the capabilities of the client " (see col.6, lines 58-59) can be sent or streamed to the client. Furthermore, with respect to the limitation of claim 2, any data transmitted, such as an application can be considered a message.

(d) That the limitations of claim 3, specifically, "generate the one or more messages such that the logic is included in the one or more messages by reference" (see Appeal Brief, pages 11-12), is not taught by Sahai.

**In response to (d)**, see response to (c). Clearly, such application generated and transmitted to the client will be inherently referenced allowing the client to have knowledge of the content of the message.

**(e)** That the limitations of claim 4, specifically, "generate the one or more messages such that the selected one of the plurality of versions of the digital content is not directly included in the media message as first transmitted to the receiving computer system, but is separately transferred under the control of the logic for displaying" (see Appeal Brief, page 12), is not taught by Sahai.

**In response to (e)**, Sahai clearly teaches the logic is separately transmitted from the media message. Sahai teaches that the logic is transmitted to the client from the server upon dereferencing a home page (see col.6, lines 60-62). After the capabilities are made known to the server, Sahai teaches that the server performs "asset selection and media data adaptation... and then starts the streaming of the multimedia data to the client" (see col.4, lines 32-39").

**(f)** That the limitations of claim 5, specifically, "generate the one or more messages such that the selected one of the plurality of versions of the digital content is downloaded by the logic for displaying, and is downloaded in a form customized for an addressee of the message" (see Appeal Brief, pages 12-13), is not taught by Sahai.

**In response to (f)**, Sahai clearly teaches the digital content is customized for a particular client (i.e. addressee of the message) (see col.4, lines 32-36). Sahai further



adds that the data is formatted and adapted to the client capabilities (i.e. addressee of the message) and user specifications (see col.5, lines 41-45).

**(g)** That the limitations of claim 8, specifically, "wherein the plurality of different digital content elements includes a video sequence and an animation sequence" (see Appeal Brief, pages 13-14), is not taught by Sahai.

**In response to (g)**, Sahai clearly teaches the invention pertains to "video/multimedia" assets (see col.3, lines 5-6). However video sequence and animation sequence are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Multimedia assets will be transmitted regardless of the content of the multimedia asset. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include any digital content elements because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

**(h)** That the limitations of claim 9, specifically, "wherein the plurality of different digital content elements includes a first digital content element constructed for playing on a first player and a second digital content element constructed for playing on

a second player different from the first player” (see Appeal Brief, page 14), is not taught by Sahai.

**In response to (h)**, Sahai clearly teaches the data is formatted and adapted to the client capabilities (i.e. addressee of the message) and user specifications (see col.5, lines 41-45). Sahai further teaches the capabilities of the client differ in hardware and software (see col.3, lines 34-40). Therefore, since certain clients can have “RealVideo” and others can have “RealAudio”, the capabilities of the client devices and the multimedia data transmitted to the individual clients, are clearly different.

**(i)** That the limitations of claim 10, specifically, “wherein the selected one of the different digital content elements is selected based upon actions of a user of the computer system in connection with the received message” (see Appeal Brief, pages 14-15), is not taught by Sahai.

**In response to (i)**, the appellants’ seem to be asserting something more than what is claimed. The cited passage clearly and explicitly teaches that the selection of the digital content element is adapted and adjusted according to the client capabilities and user specifications or preferences (see col.2, lines 8-18; in response to (e); and in response to (f)).

**(j)** That the limitations of claim 40, specifically, “generate the one or more messages such that the logic for testing digital content capabilities of the receiving

computer system includes a script to be executed by the receiving computer system to test said digital content capabilities" (see Appeal Brief, page 15), is not taught by Sahai.

**In response to (j)**, any application that runs inherently incorporates numerous scripts to perform the functions of the application. Such knowledge is very obvious to one of ordinary skill in the art.

**(k)** That the limitations of claim 41, specifically, "generate the one or more messages such that the logic for testing and the logic for displaying are appended to the media message" (see Appeal Brief, page 15), is not taught by Sahai.

**In response to (k)**, see in response to (c).

**(l)** That the limitations of claim 42, specifically, "generate the one or more messages such that the media message further includes: a replaceable section to be replaced by a replacing section including the selected one of the plurality of versions of media content" (see Appeal Brief, page 15), is not taught by Sahai.

**In response to (l)**, Dunning clearly teaches of outputting a lower quality in lieu of a higher quality (see col.10, lines 43-51). This teaching is clearly not an additive as asserted by the appellants', but rather a replacement since you cannot add a version from high quality to render low quality.

**(m)** That the limitations of claim 43, specifically, "generate the one or more messages such that the logic for displaying includes a replace script to replace the

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replaceable section of the media message with the replacing section" (see Appeal Brief, page 15), is not taught by Sahai.

**In response to (m)**, see in response to (j).

**Related Proceeding(s) Appendix**

13. There are no copies of any decisions rendered by a court or the Board in any proceedings.

14. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael Won/

Primary Examiner

April 15, 2008

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